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OFFICE OF PETITIONS

In re Application of :
Cummings et al. :
Application No. 10/760,139 : **ON PETITION**
Filed: January 16, 2004 :
Attorney Docket No. SD-8481 :

This is a decision on the petition under 37 CFR 1.137(b), filed April 3, 2008, which will be treated as a petition to withdraw of the holding of abandonment in the above-identified application.

The petition to withdraw the holding of abandonment is **GRANTED**.

The above-identified application was held abandoned for failure to timely reply to the Notice of Allowance allegedly mailed November 19, 2007, which set a statutory period for reply of three (3) months. A reply was due on or before February 19, 2008. A Notice of Abandonment was mailed on March 26, 2008.

Petitioner asserts "that there is NO record in PAIR of a Notice of Allowance generated other than the 'Corrected' form sent to the Applicants" on November 30, 2007.

After a review of USPTO records, the Notice of Allowance listed as being mailed on November 19, 2007 in the USPTO database cannot be found. It appears that the Notice was never truly mailed out. Therefore, the due date as listed on the November 30, 2007 Notice of Allowance should have reflected a three-month period for reply. Accordingly, the issue and publication fees submitted on February 27, 2008 were timely.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status. The petition to revive under 37 CFR 1.137(b) is hereby dismissed as moot.

A petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181 does not require a fee. Accordingly, the \$1540.00 petition fee will be credited to petitioner's deposit account as authorized.

This matter is being referred to the Office of Data Management for processing into a patent.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.

Liana Walsh
Petitions Examiner
Office of Petitions